Recommendations for Improving "Attachment D"
Network Design and Implementation Plan Certification
Broadband Technologies Opportunity Program / Broadband Initiatives Program
American Recovery and Reinvestment Act of 2009

The practice of engineering is regulated in all 50 states, the District of Columbia, Puerto Rico, Guam and the Virgin Islands. Each of these local governments has implemented specific laws, regulations and practices. A "Professional Engineer" is a person who has been licensed or registered by the local government. The Federal government does not regulate the practice of engineering, nor does it license or register individuals or corporations.

With some variations from state to state, the practice of engineering is regulated "In order to safeguard life, health, and property and to promote the public welfare[1]". Professional Engineers are bound by codes of ethics to promote a high degree of integrity in the practice of engineering. Engineers are bound by state laws regarding how and when certifications may be made, the practice of sealing plans and specifications and other activities. In particular, engineers are prohibited from sealing plans, specifications and reports that have not been prepared by the certifying engineer. Engineers are prohibited from providng any services outside any of the licensee's areas of competence or of providing false certifications. The certification of a client's application to the Broadband Technologies Opportunity Program and/or the Broadband Initiatives Program is not a matter to be considered lightly.

On July 31st 2009, the NTIA and RUS provided some guidance in version III of the "BIP/BTOP Frequently Asked Questions". In this document, the government clarified that the intent of the certification is not to provide a guarantee, but rather to state that the proposed project *"is feasible under reasonably anticipated circumstances for the project to be substantially complete in two years and complete within three years after the date of the award"*. We recommend inclusion of this statement on the form.

The certifying engineer may or may not be the author of the System Design and Network Diagram sections of the application. To make it clear that the certification is based on these sections, we recommend the insertion of the phrase "*based on our prepration of, or review of*". If the NTIA and/or RUS have intended that the Professional Engineer is always responsible for the preparation of these sections, revised guidance from the agencies should be published to make this clear.

Finally, the certification refers to the "Project Viability Section" of the application. The Broadband Infrastructure portion described in this initial NOFA does not include a section with this title. It appears that it is the intent of the government that for Broadband Infrastructure the Project Viability is covered by sections Paragraphs 35 through 39, 41 and 42 of the Grant Guidelines document (Version 1.0 – July 10, 2009). We recommend that future guidelines make it clear which sections of the application constitute "the Project Viability Section", so that the certification is uniformly interpreted.

[1] National Councel of Examiniers for Engineering and Surveying (NCEES) Model Law Section 110.10(A), August 2008

We recommend additional information be provided on the certification to make it clear who the applicant is and which firm the engineer works for. It may be prudent to also include the project title on this page to prevent an unscrupulous applicant from copying the certification to additional applications that were not prepared or reviewed by the certifying engineer. We recommend that the engineer be required to list the states and registration numbers for each state applicable to the application. The NTIA and RUS should allow the engineer to add additional qualifying statements as may be required by applicable state law.

Finally, for the upcoming NOFA, it would be helpful if the instructions clarified whether or not the government requires the engineer to seal the certification. As this application is not a plan, specification, report or other engineering product, we recommend that the government does not require the certification to be sealed.

Respectfully Submitted

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President

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ACE Recommended Revised Professional Engineer Certification Form

Network Design and Implementation Plan Certification (to be complete for projects requesting more than $1 million in federal assistance)

U.S. Department of Agriculture and U.S. Department of Commerce
BIP and BTOP Program

Project Title:_____

We the undersigned certify that to the best of our knowledge and belief, based on our preparation of, or our review of, the System Design and Network Diagram sections of the application, the proposed broadband system will work as described in, and can deliver the proposed services outlined in the Service Offerings section of the application. Moreover, to the best of our knowledge and belief the proposed system can meet the proposed build-out timeframe based on the resources designated in Project Viability Section of the application and it is feasible under reasonably anticipated circumstances that the broadband system will be substantially complete in two years, and complete within three years of the date of award.

_____ _____
Date Applicant

_____
(Authorized Representative's Signature)

_____
Name

_____
Title

_____ _____
Date Engineering Firm

_____
(Certifying Engineer's Signature)

_____
Name

_____
Title

_____
PE License Number, State & Expiration Date